

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Steven B. Pollack and)	
Blue Eco Legal Council,)	
)	
Plaintiffs,)	Case Number: 08-cv-320
)	Assigned Judge: Guzman
v.)	Magistrate Judge: Brown
)	
United States Department of Justice,)	
United States Coast Guard,)	CWA, RCRA, CERCLA, AND
United States Navy,)	PUBLIC NUISANCE FTCA CASE
United States Marines, and)	
United States Department of Defense,)	
)	
Defendants.)	

MOTION TO COMPEL PROPERTY INSPECTION ON MARCH 17, 2008

Plaintiffs ask this Court to compel Defendants to allow entry onto property for inspection of the FBI's North Chicago Range on March 17, 2008 by Plaintiffs' attorney(s) and their expert James Barton (see affidavit, Exhibit 1, Plaintiffs Motion for Preliminary Injunction) pursuant to Fed. R. Civ. P. 34(a)(2).

Plaintiffs have made multiple requests for this property inspection that Defendants have rejected. Defendants argue that Fed. R. Civ. P. 34(b)(2)(A) allows them to defer such a visit until the 30th day after the February 27, 2008 discovery conference (or 30 days after the request is made) whereas Plaintiffs read this rule as requiring the visit *within* the 30 day period.

Mr. Barton, a former Navy small arms instructor, will come into Chicago for this date from Norfolk VA where he resides. Plaintiffs made Defendants aware of Barton's availability either March 15 or 17 by email on February 14, 2008. Plaintiff additionally brought up this property inspection request at the discovery conference and Defendants once again rejected Plaintiffs request. Plaintiffs then, on February 29, 2008, served Defendants their First Request for Production of Documents which included the request for property inspection on March 17, 2008. Defendants responded the visit can only happen with lead counsel present and that is not possible on that date. Plaintiffs made a final attempt to resolve this issue on March 7 by email, alerting Defendants that local US Attorneys can accompany us and alerting Defendants that their refusal would prompt this motion to compel.

WHEREFORE, having made multiple attempts to resolve this issue without involving this Court, and Defendants each time refusing to accommodate Plaintiffs' reasonable request, Plaintiffs are left with no recourse but to ask this Court to issue an order compelling Defendants to allow Plaintiffs and their expert to inspect, photograph, and sample the physical property at its North Chicago Range on Monday, March 17, 2008 at 9am, including inspection of records currently kept at the range including Range Manifests, Standard Operating Procedure documents, and Ammunition Magazine records. Plaintiffs expect, with cooperation, this visit will take approximately five hours.

Respectfully submitted,

s/ Steven B. Pollack
Steven B. Pollack, Attorney
Executive Director, Blue Eco Legal Council
3390 Commercial Ave
Northbrook, IL 60062
847-436-9566